

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20142
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On March 7, 2007, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing additional individual income tax, penalty, and interest in the total amount of \$2,726 for the tax years 2003, 2004, and 2005.

The taxpayer filed a timely appeal and petition for redetermination. He did not request a conference. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

Idaho Code § 63-3002 provides:

Declaration of intent. It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; . . .

The intent of the Idaho Legislature is to follow the federal determination of income subject only to modifications contained in Idaho law. Pursuant to the authority of Internal Revenue Code § 6103(d), the Tax Commission obtained the results of an IRS audit of the taxpayer's 2003 through 2005 federal income tax returns.

The taxpayer had failed to notify the Idaho State Tax Commission of the federal determination within the 60-day period required by Idaho Code § 63-3069. The Bureau issued a NODD to the taxpayer advising him of additional Idaho income tax, penalty, and interest due as a result of the increase to his taxable income.

In response to the NODD, the taxpayer wrote that the errors in the preparation of the returns were the result of his accountant's incompetence. He asked for consideration because he was ignorant of his accountant's lack of ability, and he did not know the changes to his federal returns would have an effect on his Idaho returns. He said no one told him he was required to notify the Idaho State Tax Commission of the increase of his taxable income.

The Bureau sent the taxpayer a letter acknowledging his protest. His file was transferred to the Legal/Tax Policy Division for administrative review. The taxpayer did not respond to a letter from the Legal/Tax Policy Division wherein the taxpayer was advised of his right to schedule a conference or submit additional information for consideration.

The taxpayer has not said he disagrees with the audit results. He explained he borrowed money to pay the additional federal tax. He said the accountant is being investigated by the IRS and the Board of Accountancy because of many complaints against her. He asked the Tax Commission to reconsider the NODD amounts.

Idaho Tax Commission Administration and Enforcement Rule 410(i) provides a five percent penalty for failure to provide the Tax Commission with a copy of a final federal determination within 60 days of the date of the determination. However, Rule 410.04 allows the Tax Commission to waive the penalty if the taxpayer can show reasonable cause for the failure that caused the deficiency.

Although the negligence penalty shown in the NODD was appropriately applied, the taxpayer has shown reasonable cause for the Tax Commission to waive that penalty. The Tax Commission modifies the NODD to reflect waiver of the penalty.

The Idaho Supreme Court heard Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 p.2d 878 (1983). In this case there was a substantial delay in resolving the taxpayer's liability. In addressing whether the taxpayer was required to pay interest, the Court stated:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, 1031(c) (1954). We agree with the State that I.C. 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute.

Interest imposed under Idaho Code, § 63-3045 is a mandatory charge. The charge is calculated from the due date of the return at a rate that is established by the legislature each year. Interest charged in the NODD must be upheld.

WHEREFORE, the Notice of Deficiency Determination dated March 7, 2007, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following additional tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$ 296	\$ 58	\$ 354
2004	1,527	210	1,737
2005	499	39	<u>538</u>
		TOTAL DUE	<u>\$2,629</u>

Interest has been computed through June 1, 2007.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2007, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

[Redacted]